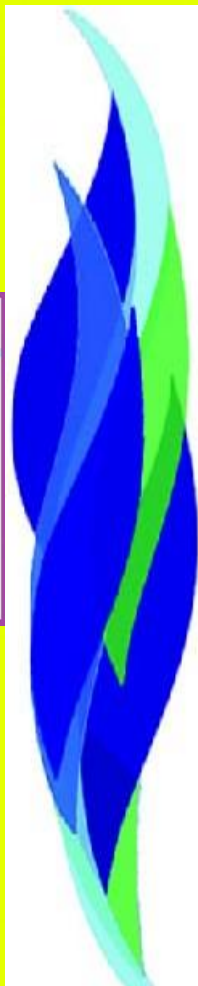




Government of Rajasthan
FINANCE DEPARTMENT



**THE RAJASTHAN
TRANSPARENCY IN
PUBLIC PROCUREMENT
ACT, 2012
and
RULES, 2013**
(Act No.21 of 2012)



PUBLIC PROCUREMENT



WHAT IS ?

Public Procurement is the action of obtaining/procuring/acquisition of goods, works, and services of any type from an external source

By
Spending Public Money



Public Procurement & Global GDP

**Based on Various
Analyses & Prevailing
Global Estimates**



**Countries are spending
around 30% to 40% of their
GDP every year on public
procurement functions**



Background

- Implementation of declaration in Budget Speech of CM for FY 2011-12.
- Constitution of a Committee by Administrative Reforms Department.
- Studied similar Acts of Tamilnadu (1998), Karnataka (1999), Draft Bill of Himachal Pradesh (2010), Model Law published by United Nations Commission on International Trade Law (UNCITRAL), 2011 and the draft Public Procurement Bill, 2012 of GOI.



The Rajasthan Transparency in Public Procurement Act, 2012 and Rules, 2013

- The Act was introduced in Rajasthan Legislative Assembly (RLA) in April and the RLA passed the Act on 26 April, 2012. The Act has come into force on 26 Jan., 2013.
- Now, every procuring entity shall have to do procurement of Goods, Works or Services in accordance with the provisions of this Act and the Rules and guidelines made under it.
- Provisions of GF&AR and PWF&AR, etc. will be applicable to the extent they are consistent with the provisions of this Act.



Legal Status of the RTPP Rules

- ▶ The Rajasthan Transparency in Public Procurement Rules, 2013 have been issued by the State Government in exercise of the powers conferred by section 55 of the Rajasthan Transparency in Public Procurement Act, 2012.
- ▶ They have been framed for carrying out the provisions of the Act and therefore have the same legal force as that of the provisions of the Act.
- ▶ These Rules have also come into force with effect from 26 January, 2013.



Status of Erstwhile Rules

- ▶ As per the **Repeal and savings clause** given in Rule 86, all rules, regulations, orders, notifications, departmental codes, manuals, by-laws, official memoranda or circulars relating to procurement of goods, services or works provided for in these rules, which are in force on the date of commencement of these rules, in relation to the matter covered by these rules are hereby repealed to the extent they are covered by these rules.
- ▶ It means the provisions of GF&AR, PWF&AR, etc. which have been covered in these Rules stand repealed. The remaining Rules, Notifications, etc. shall exist as such.



Preamble

- *An Act to regulate public procurement with the objectives of ensuring transparency, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy and safeguarding integrity in the procurement process and for matters connected therewith or incidental thereto.*
- *The State Government considers it necessary to ensure the highest standards of transparency, accountability and probity in the public procurement process and to enhance public confidence in public procurement.*



RTTPP ACT : CONTENTS

The Act contains V Chapters and 59 sections ;

Chapter I : Preliminary (Sections 1 to 3)

Chapter II : Procurement

A : General Principles (Sec.4 to 27)

B : Methods (Sec.28 to 37)

Chapter III : Appeal (Sec.38 to 40)

Chapter IV: Offences and Penalties (Sec.41to 47)

Chapter V : Miscellaneous (Sec. 48 to 59)



RTTPP RULES : CONTENTS

The Rules contains VII Chapters and 86 Rules ;

Chapter I :	Preliminary (R-1 to 2)
Chapter II :	Organisational Structure for Procurement (R-3 to 5)
Chapter III :	General Principles of Procurement (R-6 to 13)
Chapter IV :	Methods of Procurement (R-14 to 33)
Chapter V :	Bid Process Management- Open Competitive Bidding (R-34 to 79)
Chapter VI :	Code of Integrity (R-80 to 82)
Chapter VII :	Appeals (R-83 to 86)



Applicability of RTPP Act & Rules

The Act applies to all procuring entities (PEs);

- ▶ All departments and their attached and subordinate offices;
- ▶ All State PSEs;
- ▶ All Constitutional Bodies whose expenditure is met from the Consolidated Fund of the State;
- ▶ Any body established by an Act of State Legislature or a body owned or controlled by State Government;
- ▶ Any other entity notified by State Govt.



Important Definitions- (Section2)

“goods” includes all articles, material, commodities, electricity, livestock, furniture, fixtures, raw material, spares, instruments, software, machinery, equipment, industrial plant, vehicles, aircraft, ships, railway rolling stock and any other category of goods, whether in solid, liquid or gaseous form, purchased or otherwise acquired for the use of a procuring entity as well as services or works incidental to the supply of the goods if the value of services or works or both does not exceed that of the goods themselves;



Important Definitions- (Section2)

“Works” mean all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance, or renovation or railways, roads, highways or a building, an infrastructure, or structure or an installation or any construction work relating to excavation, drilling, installation of equipment and materials, as well as services incidental to the works if the value of those services does not exceed that of the works themselves;



Important Definitions- (Section2)

“Services” means any subject matter of procurement other than goods or works and includes physical, maintenance, professional, intellectual, consultancy and advisory services or any service classified or declared as such by a procuring entity and does not include appointment of any person made by any procuring entity;



Important Definitions- (Section2)

“procurement” or “public procurement”
means the acquisition by purchase, lease, licence or otherwise of works, goods or services, including award of Public Private Partnership projects, by a procuring entity whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition without consideration, and “procure” or “procured” shall be construed accordingly;



Important Definitions- (Section2)

- ▶ **“Public Private Partnership”** means an arrangement between the State Government, statutory entity or any other government owned entity on one side and a private sector entity on the other, for the provision of public assets or public services or both, through investments being made or management being undertaken, or both investments being made and management being undertaken, by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the State Government, statutory entity or any other government owned entity , as the case may be, and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the State Government, statutory entity or any other government owned entity, as the case may be, or its representative;



Important Definitions- (Section2)

“procurement process” means the process of procurement extending from the issue of invitation to pre-qualify or to register or to bid till the award of the procurement contract or cancellation of the procurement process, as the case may be;



Terms Induced New

**Bid,
Bidder,
Bid Security,
Bidding Documents,
Performance Security,
Subject Matter of Procurement,
Invitation to Bid,
National Competitive Bidding,
International Competitive Bidding, etc.**



Measures For Transparency

Fundamental Principles of Public Procurement (Sec.4)

- In relation to a public procurement, the procuring entity shall have the responsibility and accountability to -
- (a) ensure efficiency, economy and transparency;
 - (b) provide fair and equitable treatment to bidders;
 - (c) promote competition; and
 - (d) put in place mechanisms to prevent corrupt practices.



Measures For Transparency

Determination of need for procurement (Sec.5)

While assessing the need under sub-section (1), the procuring entity shall take into account the estimated cost of the procurement and also decide on the following matters, namely:-

- ▶ (a) the scope or quantity of procurement, if determined;
- ▶ (b) the method of procurement to be followed with justification thereof;
- ▶ (c) need for pre-qualification, if any;
- ▶ (d) limitation on participation of bidders in terms of section 6, if any applicable, and justification thereof; and
- ▶ (e) any other matter as may be prescribed.



Measures For Transparency

Determination of need and Procurement plan, MIS (R-6 to 10)

- ▶ The procuring entity shall first determine the need and maintain documents relating to determination and assessment of need.
- ▶ A procurement plan shall be prepared by every procuring entity for each of the item of goods, works or services to be procured during the year.
- ▶ Each procurement process undertaken by any procuring entity shall have a Unique Bid Number (UBN) which shall be used for tracking purpose during and after the bid process.



Measures For Transparency

Participation of bidders (Sec.6)

- (1) The procuring entity shall not establish any requirement aimed at limiting participation of bidders in the procurement process that discriminates against or among bidders or against any category thereof, except when authorised or required to do so by this Act or the rules or guidelines made thereunder or by the provisions of any other law for the time being in force.



Measures For Transparency

Participation of bidders (Sec.6) (cont.)

- ▶ (2) The State Government may, by notification in this behalf, provide for mandatory procurement of any subject matter of procurement from any category of bidders, and purchase or price preference in procurement from any category of bidders, on the following grounds, namely: -
 - ▶ (a) the promotion of domestic industry;
 - ▶ (b) socio-economic policy of the Central Government or the State Government;
 - ▶ (c) any other consideration in public interest in furtherance of a duly notified policy of the Central Government or the State Government:



Measures For Transparency

Participation of bidders (R-13) (cont.)

- ▶ The procuring entity, at the time of inviting the participation of bidders in the procurement process, shall declare whether participation of bidders is limited or not and if limited, grounds thereof.
- ▶ Normally the procedure of National Competitive Bidding (NCB) shall be adopted. The procedure of International Competitive Bidding (ICB) may be adopted if there is such a condition of adopting it or it is in the public interest to adopt ICB.



Measures For Transparency

Obligations related to value of procurement

(Sec.8, R-12)

- (1) Every procuring entity shall obtain the approval of the authority which has the necessary financial powers before initiating a procurement process.
- (2) A procuring entity shall neither divide its procurement nor use a particular valuation method for estimating the value of procurement so as to avoid its obligations under sub-section (1) or to limit competition among bidders or otherwise avoid its obligations under this Act:

Provided that in the interest of efficiency, economy and timely completion or supply, a procuring entity may, for reasons to be recorded in writing, divide its procurement into appropriate packages.



Institutional Measures For Transparency

State Procurement Facilitation Cell (SPFC) (Sec.50)

Functions of SPFC –

- **(a) To maintain and update the State Public Procurement Portal;**
- **(b) To arrange for training and certification;**
- **(c) To recommend to the State Government measure for effective implementation of the provisions of this Act;**
- **(d) To provide guidance, consistent with the provisions of this Act and the rules and guidelines made thereunder, to the procuring entities with respect to the matter relating to public procurement;**



Institutional Measures For Transparency

- ▶ (e) to study different methods of public procurement and prepare and recommend standard bidding documents, pre-qualification documents or bidder registration documents;
- ▶ (f) subject to the provisions of sub-section (2) of section 28, encourage procuring entities to adopt electronic procurement; and
- ▶ (g) to discharge such other functions as may be assigned to it by the State Government consistent with the provisions of this Act and the rules and guidelines made thereunder.



Institutional Measures For Transparency

State Public Procurement Portal (SPPP) (Sec.17)

The SPPP shall provide access to following information:-

- ▶ (a) pre-qualification documents, bidder registration documents, bidding documents and any amendments, clarifications including those pursuant to pre-bid conference, and corrigenda thereto;
- ▶ (b) list of bidders that presented bids including during pre-qualification or bidder registration, as the case may be;
- ▶ (c) list of pre-qualified and registered bidders, as the case may be;
- ▶ (d) list of bidders excluded under section 25, with reasons;



Institutional Measures For Transparency

- (e) decisions under sections 38 and 39;
- (f) details of successful bids, their prices and bidders;
- (g) particulars of bidders who have been debarred by the State Government or a procuring entity together with the name of the procuring entity, cause for the debarment action and the period of debarment;
- (h) any other information as may be prescribed.



Institutional Measures For Transparency

State Public Procurement Portal (R-4)

- ▶ Every procuring entity shall upload and publish the procurement related required information on State Public Procurement Portal maintained by the State Procurement Facilitation Cell.
- ▶ The information published on SPPP shall be accessible to bidders community and public at large.
- ▶ SPPP shall also provide facility for e-Procurement.



Institutional Measures For Transparency

Documentary Record of Procurement Proceedings and Communications (Sec.10)-

- ▶ (a) documents pertaining to determination of need for procurement under section 5;
- ▶ (b) description of the subject matter of the procurement under section 12;
- ▶ (c) statement of the reason for choice of a procurement method other than open competitive bidding under sub-section (4) of section 29;
- ▶ (d) particulars of the participating bidders;
- ▶ (e) requests for clarifications and any responses thereto including during pre-bid conferences;
- ▶ (f) bid prices and other financial terms;
- ▶ (g) summary of the evaluation of bids;
- ▶ (h) details of any appeal under section 38, and the related decisions;



Institutional Measures For Transparency

Additional Documentary Record of Procurement Proceedings and Communications (R-79)

- ▶ (a) the names and addresses of all bidders with bid prices and conditions of bid if bid is conditional;
- ▶ (b) the name and address of the successful bidder with price on which procurement is made;
- ▶ (c) in case of rate contract method, the names and addresses of the bidders with whom the rate contract is concluded;
- ▶ (d) a summary of modification, if any, made in the bidding documents;
- ▶ (e) details of qualification required, bidders having qualifications and details of qualified or disqualified bidders with reasons;
- ▶ (f) where a written procurement contract has been executed, including rate contract, copy of contract;
- ▶ (g) in the case of empanelment, the terms and conditions of the empanelment and a copy of the agreement, if any;
- ▶ (h) a summary of the evaluation and comparison of bids, including the application of any margin of preference and reasons for rejection or non-consideration of a bid, if any; and
- ▶ (i) if the procurement process is cancelled, reasons of cancellation.



Institutional Measures For Transparency

e-Procurement

[Sec.28 (2), R-5]

The State Government may, by notification, declare adoption of electronic procurement as compulsory for different stages and types of procurement, and on such declaration, every requirement for written communication under this Act shall be deemed to have been satisfied if it were done by electronic means.

SPPP shall also provide facility for e-Procurement which shall be mandatory above a threshold value of the subject matter.



Methods of Procurement

(Sections 28 to 37)

1. Open Competitive Bidding;
2. Limited Bidding;
3. Two-stage Bidding;
4. Single Source Procurement;
5. Electronic Reverse Auction;
6. Request for Quotations;
7. Spot Purchase;
8. Competitive negotiations;
9. Rate Contract.



Methods of Procurement

Procurement Committees (R-3)

- Every Procuring Entity shall have to constitute atleast one Committee for the purposes of :
 - (a) Preparation of bidding documents;
 - (b) Opening of bids;
 - (c) Evaluation bids;
 - (d) Monitoring of contract;
 - (e) Spot Purchase;
 - (f) Competitive negotiation; and
 - (g) Any other purpose relating to procurement, as may be decided by the procuring entity.
- A consultant, as subject matter specialist, may also be nominated in the committee .



Methods of Procurement

Methods of Procurement

- The method of Open Competitive Bidding (S-29) shall be the most preferred method or default method of procurement. Any other method of procurement can be used only in the conditions specified in the Act or the Rules.
- The procedures to be adopted in using various methods have been prescribed in this Chapter.
- New methods of Electronic Reverse Auction, Competitive Negotiations, Request for Quotations, Spot Purchase have been incorporated.



Methods of Procurement

Limited Bidding (S-30, R-16)

(1) Conditions-

- (a) the subject matter of procurement can be supplied only by a limited number of bidders; or
- (b) the time and cost involved to examine and evaluate a large number of bids may not be commensurate with the value of the subject matter of procurement; or
- (c) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding; or
- (d) procurement from a category of prospective bidders is necessary in terms of sub-section (2) of section 6.



Methods of Procurement

Limited Bidding (Cont.)

- **Prescription for Condition (b)-**
- If lower value of the subject matter of procurement is the reason of adopting the method of limited bidding, then this method may be adopted if the value of the subject matter is less than Rupees two lakh on one occasion but it shall not exceed Rupees ten lakh in a financial year.
- **Procedure-**
- The procuring entity shall issue an invitation to bid by exhibiting it on the State Public Procurement Portal and by writing directly, and on the same day, to-
- all the bidders who can supply the subject matter of procurement, if there are only limited no. of suppliers; or



Methods of Procurement

Limited Bidding (Cont.)

- all the bidders who are registered for the subject matter of procurement with the procuring entity; or
- at least three manufacturers, authorised dealers, authorised service centres, bona-fide dealers or service providers, in case registered bidders are not available.
- The procuring entity may allow all prospective bidders who fulfill the qualification criteria, whether an invitation to bid has been issued to such bidders or not.
- If limited bidding is invited under clause (b) and (c) of sub-section (1) of section 30, bid security shall not be obtained.



Methods of Procurement

Single Source Procurement (S-31, R-17)

Conditions

- (a) the subject matter of procurement is available only from a particular prospective bidder, or a particular prospective bidder has exclusive rights in respect of the subject matter of procurement, such that no reasonable alternative or substitute source exists, and the use of any other procurement method would therefore not be possible; or
- (b) owing to a sudden unforeseen event, there is an extremely urgent need for the subject matter of procurement, and engaging in any other method of procurement would be impractical; or
- (c) the procuring entity, having procured goods, equipment, technology or services from a supplier, determines that additional supplies or services must be procured from that supplier for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services; or



Methods of Procurement

Single Source Procurement (Cont.)

- (d) there is an existing contract for the subject matter of procurement which can be extended for additional goods, works or services and that the procuring entity is satisfied that no advantage would be obtained by further competition, the prices are reasonable and provisions for such extension exist in the original contract; or
- (e) the procuring entity determines that the use of any other method of procurement is not appropriate for the protection of national security interests; or
- (f) procurement from a particular prospective bidder is necessary in terms of sub-section (2) of section 6; or
- (g) subject matter is of artistic nature; or
- (h) subject matter of procurement is of such nature as requires the procuring entity to maintain confidentiality, like printing of examination papers.



Methods of Procurement

Single Source Procurement (Cont.)

- **New conditions added to S-31(1):**
- (a) Hiring of the services of consultant or professional is required, for a maximum period of twelve months and up to financial limit of Rupees five lakh in each case, subject to delegation of financial powers; or
- (b) Price of subject matter of procurement is administered by the State Government or the Central Government.
- **Procedure-**
- solicit a bid from the single prospective bidder and shall also exhibit the invitation to bid on SPPP for procurement of Rs. One Lakh or more.



Methods of Procurement

Single Source Procurement (Cont.)

- PE may engage in negotiations in good faith with the bidder.
- single source may be selected by PE out of the list of empanelled / registered bidders or suitable bidder identified through other reliable sources.
- Bid security shall not be obtained.
- In the emergent situation of natural calamities, procurement may be made up to the ceiling rates fixed by a committee headed by district collector.



Methods of Procurement

Two Stage Bidding (S-32, R-18) Conditions

- (a) it is not feasible for the procuring entity to formulate detailed specifications or identify specific characteristics for the subject matter of procurement, without receiving inputs regarding its technical aspects from bidders; or
- (b) the character of the subject matter of procurement is subject to such rapid technological advances and market fluctuations to make open competitive bidding unfeasible; or
- (c) the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of items in quantities sufficient to establish their commercial viability or to recover research and development costs; or
- (d) the bidder is expected to carry out a detailed survey or investigation and undertake a comprehensive assessment of risks, costs and obligations associated with the particular procurement. 44



Methods of Procurement

Two Stage Bidding (Cont.)

Procedure

- In the first stage the PE shall invite proposals containing the professional and technical competence, qualifications of bidders and contractual terms and conditions of the proposed procurement.
- The committee may hold discussions with the bidders.
- The PE may add, amend or delete any specification of the subject matter or criterion for evaluation but shall not modify the fundamental nature of the procurement itself.



Methods of Procurement

Two Stage Bidding (Cont.)

- In the second stage of the bidding process, the PE shall invite bids from all those bidders whose bids at the first stage were not rejected, to present final bid with bid prices and detailed technical bid in response to a revised set of terms and conditions.
- Any bidder, invited to bid but not in a position to supply the subject matter of procurement due to changes in the specifications, may withdraw from the bidding proceedings without liability of forfeiting its bid security.



Methods of Procurement

Electronic Reverse Auction (S-33, R-19 to 23)

Conditions

- (a) it is feasible for the procuring entity to formulate a detailed description of the subject matter of the procurement; and
- (b) there is a competitive market of bidders anticipated to be qualified to participate in the electronic reverse auction, such that effective competition is ensured; and
- (c) the criteria to be used by the procuring entity in determining the successful bid are quantifiable and can be expressed in monetary terms.



Methods of Procurement

Electronic Reverse Auction (Cont.)

Procedure

- the PE shall invite bids to the electronic reverse auction by causing an invitation to be published. The invitation shall also include details relating to –
- access to and registration for the auction;
- opening and closing of auction;
- norms for conduct of the auction;
- the criteria and procedure for examining bids against the description of the subject matter of the procurement;
- the criteria and procedure for evaluating bids, including any mathematical formula that shall be used in the evaluation procedure during the auction ;
- the date and time of the opening and closing of the auction, etc.



Methods of Procurement

Electronic Reverse Auction (Cont.)

- **The PE may decide, in the light of the circumstances of the given procurement, that the electronic reverse auction shall be preceded by an examination or evaluation of initial bids.**
- **Confirmation of registration for the electronic reverse auction shall be communicated promptly to each registered bidder.**
- **The period of time between the issuance of the invitation to the electronic reverse auction and the auction shall be of minimum seven days .**



Methods of Procurement

Electronic Reverse Auction (Cont.)

- During the auction:-
- (a) all bidders shall have an equal and continuous opportunity to present their bids;
- (b) there shall be automatic evaluation of all bids in accordance with the criteria, procedure and formula provided to the bidders;
- (c) each bidder must receive, instantaneously and on a continuous basis during the auction, sufficient information allowing it to determine the standing of its bid vis-à-vis other bids; and
- (d) there shall be no communication between the procuring entity and the bidders or among the bidders, other than as provided for in clauses (a) and (c) above.⁵⁰



Methods of Procurement

Electronic Reverse Auction (Cont.)

- The auction shall be closed in accordance with the criteria specified to the bidders.
- The procuring entity shall suspend or cancel the auction in the case of failures in its communication system that put at risk the proper conduct of the auction.
- At the closure of the electronic reverse auction the lowest-priced bid or the most advantageous bid, as the case may be, shall be the successful bid.
- Other provisions of Ch.V shall, mutatis mutandis, apply to ERA also.



Methods of Procurement

Request for Quotations (S-34R-24)

Conditions

- (a) procurement of readily available commercial-off-the-shelf goods that are not specially produced to the particular description of the procuring entity and for which there is an established market; or
- (b) physical services that are not specially provided to the particular description of the procuring entity and are readily available in the market; or
- (c) procurement of any goods or works or services which are urgently required for maintenance or emergency repairs;



Methods of Procurement

Request for Quotations (Cont.)

- A PE may adopt the method of RFQ for procurement if the value of the subject matter of procurement is less than Rupees one lakh on one occasion but it shall not exceed Rupees five lakh in a financial year.
- Quotations shall be requested from as many potential bidders as practicable, subject to a minimum of three.
- each bidder shall be permitted to give only one quotation.
- the successful quotation shall be the lowest priced quotation meeting the RFQ needs of the PE.



Methods of Procurement

Spot Purchase (S-34, R-25)

Conditions

- (a) procurement of readily available commercial-off-the-shelf goods that are not specially produced to the particular description of the procuring entity and for which there is an established market; or
- (b) physical services that are not specially provided to the particular description of the procuring entity and are readily available in the market; or
- (c) procurement of any goods or works or services which are urgently required for maintenance or emergency repairs;



Methods of Procurement

Spot Purchase (Cont.)

- A PE may adopt the method of spot purchase for procurement if the estimated cost or value of the subject matter of procurement is less than Rupees fifty thousand on one occasion but it shall not exceed Rupees three lakh in a financial year.
- A PE shall procure a subject matter of procurement on the recommendation of the spot purchase committee. The committee shall survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier of the subject matter and shall record the following certificate-



Methods of Procurement

Spot Purchase (Cont.)

- Following certificate shall be given by members of the Spot Purchase Committee:-
- “Certified that we
....., (*names of members of the committee*) members of the spot purchase committee are jointly and individually satisfied that the subject matter recommended for procurement is of the requisite specifications and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply/provide the subject matter in question.”



Methods of Procurement

Procurement without Quotations (R-26)

- The subject matter of procurement valuing up to rupees ten thousand may be procured on one occasion subject to a limit of below rupees one lakh during a financial year without inviting quotations, from the Government Departments / Corporations, authorised dealers, co-operative stores/bhandars or retailers who are bona-fide dealers in the subject matter of procurement.
- The erstwhile value of Rs. 3000 has been enhanced to Rs.10000.



Methods of Procurement

Work Order System/Piece Work System for works (R-27)

- The existing methods of procurement of works by Work Order system and Piece Work system shall continue to be used.
- The existing limit of awarding Work Orders and Piece Work Agreements has been increased from Rs. 30000 to less than Rs. 100000.



Methods of Procurement

Competitive Negotiations (S-35, R-28)

Conditions

- (a) owing to an urgency brought about by unforeseen events, the procuring entity is of the opinion that the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding or any other method; or
- (b) the subject matter of procurement involves livestock, cotton, oilseeds or such other agricultural produces whose prices fluctuate frequently and in the opinion of the procuring entity the subject matter of procurement cannot be usefully obtained by adopting the method of open competitive bidding or any other method.



Methods of Procurement

Competitive Negotiations (Cont.)

Procedure

- procurement of the subject matter shall be made through the competitive negotiations committee. The committee shall give the following certificate-
- “Certified that we -----
-----(*names of members of the committee*), members of the competitive negotiations committee are jointly and individually satisfied that the subject matter of procurement recommended is of the requisite specifications and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the subject matter of procurement.”



Competitive Negotiations (Cont.)

- To ensure effective competition, an adequate number, not being less than three, of potential bidders selected in a non-discriminatory manner shall be included in procurement process.
- An equal opportunity shall be given to all bidders to participate in the negotiations.
- After completion of negotiations, the procuring entity shall request all bidders remaining in the proceedings to present, by a specified time and date, a best and final offer with respect to all aspects of their proposals



Methods of Procurement

Rate Contract (S-36, R-29)

Conditions

- the need for the subject matter of procurement is expected to arise on an indefinite or repeated basis during a given period of time;
- by virtue of the nature of the subject matter of procurement, the need for it may arise during a given period of time.
- A PE may adopt the method of Rate Contract, when it determines that by virtue of the nature of subject matter of procurement, the need for that subject matter may arise on an urgent basis during a given period of time.



Methods of Procurement

Rate Contract (Cont.)

Procedure

- An approximate quantity of required goods, works or service during the period shall be indicated in the Notice Inviting Bids, but no minimum quantity is guaranteed.
- The period of rate contract shall be generally one year, preferably a financial year to match with budget provisions and levy of taxes.



Methods of Procurement

Rate Contract (Cont.)

- In the first stage single part or two part bids shall be invited.
- A rate contract shall be entered, for price without a commitment for quantity, place and time of supply. of subject matter of procurement, with the bidder of lowest priced bid or most advantageous bid.
- In the second stage supply or work order shall be placed at the contracted price for supply or execution of the required quantity.
- Rate contracts may be entered with more than one bidder as parallel rate contracts.
- The prices under a rate contract shall be subject to price fall clause. A clause regarding price fall shall be incorporated in the terms and conditions of rate contract.



Methods of Procurement

Registration of Bidders (S-19,R-30)

- (1) With a view to establishing reliable sources for a subject matter of procurement or a class of procurement, which may be commonly required across procuring entities or repeatedly required by a procuring entity, a procuring entity may maintain a panel of registered bidders.
- (2) For the purpose of sub-section (1), a procuring entity may invite offers from prospective bidders by giving wide publicity to the invitation to register and such registration shall be done in accordance with section 7, this section and the criteria set out in the bidder registration documents.
- (3) The procuring entities shall update the list of registered bidders by allowing potential bidders to apply for registration on a continuous basis or by inviting offers for registration at least once a year.



Registration of Bidders (Cont.)

- (4) The State Government may prescribe the procedure and conditions for registration of bidders and the period for which such registration shall be valid.
- (5) Where a procuring entity does not register bidders in respect of a subject matter of procurement, it may use the list of registered bidders of any other procuring entity, if any.
- (6) The results of the registration process shall be intimated to the bidders and the list of registered bidders for the subject matter of procurement shall be published in the State Public Procurement Portal.



Methods of Procurement

Empanelment of Bidders (R-30,31)

- The PE may prepare a panel of bidders for the subject matter of procurement that is required frequently but the details of the subject matter, its quantity, time and place is not known in advance. This list shall be valid for one year which may further be extended for another one year after recording reasons. Separate panel for different subject matters may be done.
- The procuring entity shall invite applications for empanelment by pre-qualification as per the procedure prescribed for inviting open bids.
- The procurement of subject matter shall be done by the procuring entity from amongst the empanelled bidders upto the limit of delegation of financial powers by sending to all of them, request for proposals with financial bid.



Methods of Procurement

Direct Procurement From Notified Agencies (S-6, R-32)

- A procuring entity may procure subject matter of procurement from the category of bidders, without inviting bids, as notified by the State Government, from time to time.
- The State Government has issued a Gazette Notification on September 4, 2013 regarding subject matters of procurement which may be procured directly as single source procurement from the sources mentioned in the notification.



Bidding Process

Open Competitive Bidding

(A-12, R-34)

- Description of the subject matter -
 - shall be set out in pre-qualification documents, bidder registration documents and bidding documents;
 - such that meets essential needs;
 - objective, functional, generic, measurable;
 - relevant technical quality, performance characteristics
 - may include plan, drawing, packaging, labeling etc.;
 - no indication for trademark / name;
- specifications - base – national standards / codes.
(If not available then only international standards/ code.)



Bidding Process

Criteria for Evaluation of Bids (A-14, R-35)

- Price, cost of operating, maintaining, repairing;
- Time of delivery / execution;
- Functional characteristics of goods, experience, competence;
- Environmental characteristics;
- Terms of payment;
- Where relevant – experience, reliability and professional & technical competence of bidders and its personnel involved;
- Trial, sample, testing, other methods – keep record;
- Non-price criteria – objective and quantifiable;
- Relative weights to each criteria – where needed;
- No other criteria or procedure shall be used, other than mentioned in bidding documents.



Bidding Process

Preparation of bidding documents (R-36)

- Sections –
 - Notice Inviting Bids (NIB);
 - Instructions to Bidders (ITB);
 - Bid Data Sheet (BDS)-
 - Contents –
 - Bidding Document, preparation of bid (language, validity, bid security, signature by whom), submission detail, evaluation method, award of contract, appeals;
 - Qualification and Evaluation Criteria;
 - Bidding Forms; and
 - Conditions of Contract and Contract Forms:
 - (i) General Conditions of Contract;
 - (ii) Special Conditions of Contract;
 - (iii) Contract Forms.
 - Any other documents, as may be necessary.



Bidding Process

- **Bidding document to include:**
 - Instructions for preparing bids.
 - Criteria and procedure for qualification of bidders.
 - Documentary evidences – needed- proof of qualifications like authorised dealer.
 - Detail description of subject matter – technical specifications, quantity, location, time.
 - Detail description of subject matter, procedure for opening, with time & place, evaluation, preferences.
 - Terms and conditions of contract – to the extent known.
 - If portion of subject matter is permitted – mentioned.
 - Manner – bid price to be formulated – Besides cost, transport, insurance, taxes etc. .
 - Nature, form, amount etc. of Bid / Performance Security.



Bidding Process

- Means to seek clarifications and whether intends to convene meeting.
- Manner, place, deadline for submission of bid.
- Validity period.
- Place, time, date of opening of bid.
- Name, designation, address of Officer to communicate directly.
- Commitment of bidder about transfer of technology.
- Formalities regarding execution of contract.
- Right to appeal / cancellation of bid.
- Bidding documents – make available to each bidder – who responds in accordance with procedure and requirement therein.
- If pre-qualification procedure adopted – then to pre-qualified only.



Bidding Process

Single Part and Two Part Bids (A-13, R-37)

- Single Part –
 - Single envelope - Technical, commercial and financial aspects.
- Two Part –
 - Where technical aspect is to be evaluated.
 - First envelope – Techno-commercial aspects – technical quality and performance aspects, commercial terms and conditions.
 - Second envelope – Financial bid
 - Open financial bids only of technically acceptable bids.



Bidding Process

Qualifications of bidders (A-7, R-38)

- shall be set out in pre-qualification, bidder registration, bidding documents – apply equally to all bidders.
 - Posses professional, technical, financial and managerial resources.
 - Fulfilled obligation to pay tax liability of central, state government and local authority.
 - Not insolvent, in receivership, bankrupt or wound-up.



Bidding Process

- No director or officer – convicted of criminal offence related to professional conduct – within a period of three years OR debarred.
- Should not have conflict of interest – as provided in the Act and specified in the bidding documents.
- Fulfill other qualifications mentioned in documents.
- Bidder disqualified, if provide false or materially incorrect information.
- Bidders may be asked to demonstrate qualifications again as per same criteria – failing which may result in disqualification.



Bidding Process

Eligibility of bidders (R-39)

- Bidder may be –
 - Natural person, private entity, government-owned entity or where permitted a combination of them.
- Joint Venture (JV)
 - During bidding process – Representative may sign.
 - Bid accepted – form registered JV Company / Firm or all parties to sign the agreement.
- Should not have conflict of interest.
- If debarred by state government – Not eligible for any procuring entity.
- If debarred by procuring entity – Not eligible for that entity.
- For goods – mfg., distributor or bona-fide dealer.



Bidding Process

Time frame for Procurement Process (R- 40)

- Time frame for various methods of procurement by one stage bidding is available in tabular form under rule 40 (1) – for issue of documents, submission, opening of bids, award letter, execution of agreement.
- Time schedule for decision on the bids by the competent authority is available in tabular form under rule 40(2) – e.g. Head of Office (20 days), Regional Officer (30 days), Head of Department (50 days) etc. .
- If decision is not taken within this limit – with reason to next higher authority for decision.



Bidding Process

Pre-qualification Proceedings (A-18, R-41)

- To identify bidders - Qualified for specified period of time – may engage pre-qualification process.
- Registration / empanelment as per procedure in documents.
- Decision of pre-qualification - In accordance with procedure and criteria in pre-qualification documents – also publish result on SPPP (Portal).
- If not qualified – inform each bidder with reason.
- If pre-qualification done – only such bidders to continue in procurement proceedings.



Bidding Process

Bid Security(R – 42)

- Defined u/s. 2 (v) – for securing fulfillment of any obligation in terms of provisions of bidding documents.
- Form – cash, banker's cheque, D.D., Bank Guarantee.
- B.G. shall be confirmed from issuing bank.
- Bid securing declaration (in lieu of bid-security) – from departments of state or central govt. / PSUs, regd. or coop. societies owned or controlled by State Govt.



Bidding Process

- **Amount**
 - 2% or as specified in bidding document, of estimated value.
 - 0.5% of quantity offered – in case of small scale industries of Rajasthan.
 - 1% of value of bid – sick and BIFR cases.
- **Bid Security Instruments to accompany the sealed bid.**
- **Validity upto 30 days beyond original / extended validity of bid.**
- **Pending for refund – not to be adjusted against fresh bids – but adjustable towards re-invited bid.**
- **Not needed –**
 - Procurement below Rs. 10,000/-.
 - Procurement by limited bidding u/s. 30(1)(b) – high time & cost not commensurate with value of procurement & u/s. 30(1)(c) urgency due to unforeseen events not allowing open bid.



Bidding Process

- Request for Quotations (RFQ), Spot Purchase, Single Source Procurement and competitive negotiations –
- Bid security may be adjusted against performance security for successful bidders and refunded to others.
- Return bid security after earliest of the following events –
 - Expiry of validity of bid security.
 - Submission of Performance Security and execution of agreement.
 - Cancellation of procurement process.
 - Withdrawal of bid prior to deadline – unless bidding document prohibits it.
- Forfeiture – when bidder :
 - Withdraw or modify after opening of bid.
 - Fails to deposit performance security.
 - Does not execute agreement.
 - Fails to perform.
 - Breaches code of integrity.



Bidding Process

Notice Inviting Bids (NIB) (R-43)

- **Invite bids for :**
 - Open Competitive Bidding.
 - 2 stage bidding.
 - Applications for pre-qualifications.
- **Manner :**
 - State Public Procurement Portal (SPPP).
 - Own official website.
 - An abridged notice in newspapers as per rule 43 (6) & (7) thru DIPR.
 - Notice board of concerned offices.
 - Cost above Rs. 200 lakhs – publish in Indian Trade Journal also.
 - More than one subject matter – in one NIB.
 - Time for submission of bid and mode of publication – Tables under rule 43(6) & (7) – 30 days.
 - For International Comp. Biddings – Additionally thru Indian Embassies Abroad, Foreign Embassies in India, International Trade Journals.
 - Period for submission 45 days.
 - In emergent conditions – can reduce submission time to half – but record reasons.



Bidding Process

- Contents on Portal
 - Name and address of procuring entity.
 - Summary of required principal terms and conditions of contract.
 - Single stage / 2 stage.
 - Criteria and procedure for evaluation.
 - Price, Mode of Payment, Procedure and Place for bidding document.
 - Amount of Bid Security and its form.
 - Manner, place, time and date of submission of bids.
 - Procurement reserved for any category.
 - Right to cancel bid.
 - Time, date and place of opening of Bids.
 - Any other important information.

Price, fee or user charges of Bidding Documents (R-44)

- Consider preparation and delivery cost.
- May charge processing fee or user charges for e-procurement facility.



Bidding Process

Sale of Bidding Documents (R-45)

- Commence from the date of publication.
- Make available to any bidder to pay the price – unless reserved for specific category / prequalification.
- Also place on the portal (SPPP).
- Bidders may download from website and pay price on submission of bid.
- Bidding Documents purchased by agent, may be used by principal or vice-versa.



Bidding Process

Pre-bid clarifications (A-22, R-46)

- Bidder may seek clarification about bidding document and procuring entity shall respond, within period specified in documents.
- Identity of Bidder seeking clarifications – Not to be disclosed.
- Minutes shall be drawn of conference and sent to all bidders and shall be published on the portal.



Bidding Process

Changes in Bidding Documents (A-23, R-47)

- At Procuring Entity's (PE) own initiative or as a result of request for clarification by a bidder.
- Modify by issuing an addendum.
- If materially affects the terms in the Bidding Document –
 - Publish in the same manner as original.
 - Also give sufficient time to Bidders.
- Bidders those who have already submitted Bids shall also get the chance to modify.



Bidding Process

Period of validity of Bids (R-48)

- Specify in bidding documents – shall be normally not more than 90 days
- Within validity period the Bidder may be requested to extend.
- Bidder agrees to extend validity, shall also extend validity of Bid Security, otherwise same effect as if refused.
- Bidder not agreeing to extend validity may withdraw without forfeiture of Bid Security.



Bidding Process

Format and signing of Bids (R-49)

- One 'ORIGINAL' and one or more 'COPY' of Bids as demanded in Bidding Documents.
- Signed by Bidder or Authorised Person.
- Same procedure for 2 part Bid also.



Bidding Process

Sealing and Marking of Bids (R – 50)

- Keep in separate envelopes – “ORIGINAL” & “COPY”.
- Keep in one envelope and seal.
- Envelopes – inner and outer shall bear :
 - Names and complete address of procuring entity.
 - Specific identification of bidding process.
 - Warning – NOT TO BE OPENED BEFORE DUE DATE
..... .
 - If not properly marked or sealed – procuring entity not responsible.
 - Submit by post or hand.
 - If so specified – submit only electronically by following procedure given on the Portal.



Bidding Process

Deadline for submission of Bids (R-51)

- Procuring Entity to designate a person, to receive bid.
- Bidder may drop bid in the bid box, bid received by the designated person shall also be put in the bid box, up to time and date given in the NIB.
- Normally no extension for time and date of submission - except when substantial changes are done in the bidding document. In that case publish in the same manner as original publication and on the portal- also give reasonable time to Bidders.
- If last date of submission and opening is holiday and PE's Office – then on next working day.

Late Bids (R-52)

- Shall not receive personally.
- Arrives by post – mark “LATE” and return unopened by Registered / Speed Post.



Bidding Process

Receipt & custody of Bids (R-53)

- Shall be received and entered in specified format-
 - By hand / courier / post / drop in Bid-box.
 - Submission of e-bids – method shall be in accordance with procedure outlined on the Portal.
 - Not to be considered – by telegram or in any other format.
 - Upto specified time, date, on place in Bidding Documents.
 - Received unsealed/ open shall be marked and signed by receiving person, put in fresh cover and reseal.
 - All bids shall be kept in sealed and locked Bid box.
 - Bid box having two locks – keys of either lock, each with PE and person receiving bids separately.
 - Bids received should be entered in Bid Receipt Register in figures and words.
 - Do make entry of late bids also, after closing the Register and treat them as specified earlier.



Bidding Process

Withdrawal, Substitution and Modification of Bids (R-54)

- Upto last time and date of submission of bids.
- By sending a written notice by Bidder or Authorised Representative.
- The written notice envelope should have clear nomenclature of NIB alongwith the purpose of, such as 'Withdrawal' or 'Substitution'.
- In case of formalities complete in all respect as stated above, unopened bids which were 'Withdrawal' may be returned under registered / speed post.



Bidding Process

Opening of Bids (R-55)

- Bids received upto time, date and at the place specified in Bidding document shall be opened by Bid Opening Committee (BOC).
- Hand over to convener of the Bids opening committee, the Bid box or the bids, received by the designated person in the manner specified.
- In case of e-bid, procedure may be seen on SPPP – bidders may watch on website.
- Bids shall be opened in presence of Bidder or his authorised representative (authority in writing), attendance shall be recorded.
- All the bids received / found in bid box shall be counted and numbered as A/N in red ink, 'A' stands for number and 'N' stands for total number of the bids.
- List of bidders shall be prepared having name, telephone number – attach authority letter of Representative.



Bidding Process

- **First – ‘Withdrawal’ envelopes – return corresponding bid unopened.**
- **Then ‘Substitution’ envelopes – return ‘substituted’ bids.**
- **Thereafter ‘Modification’ envelopes shall be attended.**
- **Record**
 - **Names of Bidders, whether substitution / modification.**
 - **Bid Price**
 - **Bid Security**
 - **Other – which committee considers.**
- **Sign on first page and initials on other pages by all members of committee.**
- **Encircle – key information like price, delivery period etc.**
- **Mark and sign – unfilled spaces.**
- **Mark ORIGINAL and additional COPIES.**



Bidding Process

- **Alteration / Correction / Additions / Over-writing – initials to be done.**
- **No rejection of bid, on opening except:**
 - Late Bids.
 - Alternative Bids (if not permitted).
 - Bid not accompanied with price of bidding document, processing fee or user charges and bid security.
- **The committee to prepare record – of above facts and**
 - Sign by committee and bidders present
 - Omission of bidders signature shall not invalidate contents.
- **2 part Bids – Open ‘Technical’ First, Financial only of qualified bidders.**
- **Expression of Interest / RFQ-**
 - First stage shall be opened as per rule 55(3 to 11(for opening single part bid)).
 - Second stage as per 2 part bids.



Bidding Process

Preliminary examination of Bids (R-56)

- A Bid Evaluation Committee constituted shall examine bids, assess *prima-facie*, responsiveness and ensure that Bids are –
 - Signed, sealed, validity upto, Bid Security, it is unconditional and agrees to submit Performance Guarantee (PG) as per Bidding Document.



Bidding Process

Tabulation of Technical Bids (R-57)

- Bid Evaluation Committee shall prepare comparative statement, while looking at the nature of the Bid such as whether RFQ / EoI, Two Stage Bidding, containing—
 - Name, Address (including email id) of the Bidder;
 - Reference of registration no. / empanelment if any, or regd. with any other PE;
 - Whether Bid is substituted / modified;
 - Whether Bidder is eligible;
 - Bids are signed properly / BOC members;
 - Proof of payment of price, fee, user charges;
 - Meets qualification criteria – related to technical, financial & professional etc. as per Bidding Document requirement;
 - Result of evaluation of technical bid.



Bidding Process

Tabulation of Financial Bids (R-58)

- After technical evaluation - to evaluate lowest or most advantageous Bid on the basis of following points, a table shall be prepared –
 - Name and address (including email);
 - Whether technically qualified or not, if any;
 - Meet specifications of the subject matter;
 - Rate per unit / total price;
 - Taxes and duties;
 - Packing, forwarding, transit, insurance;
 - Total cost per unit;
 - Discount, Rebate if any;
 - Delivery / completion period;
 - Validity of Bids upto;
 - Mode of payment;
 - Sample / trial /testing etc;
 - Guarantee / Warrantee/ defect liability period ;
 - Maintenance period / AMC etc.;
 - Any other information sought in Bidding Document or additional information not part of Bidding Document;
 - Material deviation, reservation or omission



Bidding Process

Tabulation of Financial Bids (R-58)

- Evaluation (combined in case of two stage) of the bidding document, standing of the bidder in evaluation.
- If single part bid following points shall also be considered alongwith above, viz.:
 - Reference of registration / empanelment with the PE or elsewhere be mentioned;
 - Mention of 'substitution', 'modification' or 'original';
 - Bidder is fulfilling criteria as per Bidding Documents;
 - Bid is duly signed by himself or the authorised representative, in later case proper letter from bidder;
 - Proof of payment of Bid Documents / processing fee / user charges, if any;
 - Proper proof / declaration u/s. 7(2)(b), (c), (d), (e).
- Recommendation in regard to the Qualified Bidder, of the BEC shall be noted by the members and signed.



Bidding Process

Determination of Responsiveness (R-59)

- **Responsiveness as per section 7(2) i.e..**
 - **Professional, financial fulfilling qualification mentioned in Bidding Document –**
 - **No pending tax liability, solvent, not convicted bidder/ director / officer, no conflict of interest.**
 - **Further it should be without –**
 - **Deviation, i.e. make substantial change in scope, quality, performance; unfairly affect competitive position;**
 - **Reservation i.e. setting of limiting conditions or withholding from complete acceptance of the requirement specified in the bidding document;**
 - **Omission i.e. the failure to submit part or all of the information or documentation required in the Bidding Document.**



Bidding Process

Clarification of Bids (R-60)

- BEC Committee may seek in writing, at any point of time to which Bidder shall reply in writing –
 - The BEC for examining, evaluation, comparison or qualification may ask Bidder;
 - No change in price except correction of arithmetic error;
 - All communication to be included in procurement proceedings.



Bidding Process

Non-material, Non-conformities in Bids (R-61)

- BEC may waive –
 - which are not material deviation, reservation or omission like Audited Accounts, Tax clearance certificates, Permanent Accounts Number Card Copy. If received timely it may be got correct by BEC else it may result in rejection of Bids.



Bidding Process

Exclusion of Bids (A-25, R-62)

- Exclude a Bid if :
 - Bidder not qualified as per Section 7;
 - The Bid materially departs from requirement or contains false information;
 - The Bidder found giving gratification – to unduly influence the process;
 - Conflict of interest;
- shall be excluded as soon as found above reasons.
- Order of exclusion – issue in writing and on portal.



Bidding Process

Technical Bids Evaluation: Two Part Bids (R-63)

- The criteria for evaluation- as per sec. 7, mentioned in Bidding Documents.
- Criteria once fixed for evaluation shall not be changed.
- Techno-commercial qualifications – As per rule 57, in tabular form:
 - In area of professional, technical, financial, managerial competence.
 - Number of years of experience.
 - Satisfactory completion of similar contracts.
 - Financial Turnover.
 - Value of orders in hand.
- Number of firms technically qualified – should be minimum three. If less than three, and want to continue the process – record reasons in writing.
- Technically qualified Bidders shall be informed of time, date of opening of financial bids – should not be later than 15 days.



Bidding Process

Correction of Arithmetic Errors in Financial Bids (R-64)

- Difference in unit and total price – unit price shall prevail.
- If mistake of decimal point in unit price, then total price shall prevail and correct the unit price.
- Discrepancy in figures and words – words shall prevail (unless amount expressed in words relates to arithmetic error).



Bidding Process

Evaluation of Financial Bids (R-65)

- **Single Part Bid –**
 - Single cover – with Bid Security, Processing Fee or user charges, price of documents.
- **Two Part Bid –**
 - Only of Technically qualified Bidders.
- **Primarily –**
 - Bidder is qualified, bid submission as per procedure and technically approved.
- **Where price is only criteria – to Lowest bid price.**
- **Where price and other award criteria – to Most advantageous bid – on the basis of criteria and procedure given in bidding documents.**
- **Mark L1, L2..... or H1, H2..... as the case may be.**
- **Ensure rate is justifiable – as per market rate also.**
- **In case of rate contract – may be more than one firm to ensure uninterrupted supply – by offering lowest rate to other Bidders.**
- **After approval of competent authority – immediately communicate to all bidders and publish on portal.**
- **Inform to successful Bidder – to complete requirements – for performance security and execution of agreement.**



Bidding Process

Comparison of Rates

Firms outside and those in Raj. (R-66)

- For firms not entitled to price preference –
 - Exclude Raj. VAT in the rates of firms of Rajasthan.
 - Add CST in the rates of firms outside Rajasthan.



Bidding Process

Price / Purchase Preferences in Evaluation (A-6(2), R-67)

- Mandatory procurement from any category of Bidders.
- Purchase or Price Preference from any category of Bidders, on grounds :
 - Promotion of domestic industry;
 - Socio-economic Policy of State / Central Govt.;
 - In furtherance of duly notified policy;
 - **Provided notification to contain reasoned justification.**
- As notified by the State Government and mentioned in the Bidding Documents.



Bidding Process

Lack of Competition (R-68)

- In case PE ends up with one responsive Bid –
 - Check necessary requirements as standard bidding conditions, specifications, publicity, time allowed etc. were taken care of.
 - If not, correct those requirements and refloat NIB.
 - Even one valid Bid – may be responsive, provided :
 - The Bid is technically qualified;
 - Price is reasonable;
 - Bid is unconditional and complete;
 - No cartelisation among bidders;
 - The Bidder is qualified – as per section 7.
- Procure entity to make note and send to next higher authority for approval.
- If dissent by any member of the committee – next higher authority to decide – sanction or cancel the bid.
- If decision to re-invite – assess market depth, eligibility criteria and cost estimate.



Bidding Process

Negotiations (R-69)

- To the extent possible, no negotiations after pre-bid stage – except in case of single source procurement or competitive negotiations.
- Negotiations only with lowest bidder in situation of :
 - Ring prices / Rate much higher than market rates
- Negotiations by Bid Evaluation Committee.
- Record the proceedings – reasons and the result.
- Information to be sent in writing – messenger / registered/ speed post / email.
- Minimum time – 7 days. If reduced, ensure communication and consent of bidder.
- Negotiations shall not cause original offer inoperative.
- Even after negotiations, rates are considered very high – invite fresh bids.



Bidding Process

Acceptance of Successful Bid & Award of Contract (R-70)

- On recommendation of committee – Procuring Entity to accept / reject the bid – within validity period.
- Dissent by any member – refer the bid to next higher authority for decision.
- Decision not taken within the time allowed under rule 40(2) – refer the bid to next higher authority.
- Bid successful – Only after approval of competent authority.
- After approval, inform to the successful Bidder within validity period.
- Bidder to execute agreement and deposit performance security within period specified in Bidding Documents / if not specified then within 15 days of dispatch of acceptance letter / Lol.
- If formal letter of acceptance takes time – issue Letter of Intent (Lol).
- Acceptance of offer complete as soon as Acceptance Letter / Lol is posted to address /email on file and shall constitute to be a binding contract.



Bidding Process

Information and Publication of Award (R-71)

- Information of award shall be communicated to all the participating Bidders and published on the portal.

Procuring Entities Right to Accept / Reject any or all Bids (R-72)

- Prior to Award of Contract – Accept / Reject / Annul Bidding Process – without liability to Bidders.
- Record reasons – for the decision taken



Bidding Process

Right to Vary Quantity (R-73)

- At the time of award of contract –
 - May increase upto 20% of quantity, specified in Bidding Documents – without change in unit prices or terms.
- If does not procure or procure less –
 - No liability towards Bidders.
- Repeat Order – Upto
 - For Works – 50% of quantity of individual item and 20% of value of original contract.
 - For Goods and Services – 25% of value.



Bidding Process

Dividing Quantities among more than one Bidder at Award (R-74)

- Ensure provision exist in the Bidding Document –
- As a rule – procure from lowest Bidder.
- Divide when found :
 - Capacity of Lowest Bidder – doubtful.
 - Subject matter is of critical and vital nature.
- Divide between second lowest or even more – in fair transparent and equitable manner.
- Counter offer of lowest bid rate to second and other lowest bidders shall not deemed to be negotiations.



Bidding Process

Performance Security (R-75)

- Shall be solicited from or successful Bidders except from those who can submit Bid Securing Declaration. (*e.g. Govt., / PSUs. / Govt. owned Coop. Societies Etc.*)
- Amount, in case of Goods & Services, of the amount of order—
 - 5% or as specified in Bidding Document / 1% in case of Small Scale Industries of Rajasthan / 2% in case of Sick and BIFR Industries.
- Amount, in case of Works—
 - 10% of the amount of work order.
- Forms-
 - Deposit thru e-GRAS / Bank Draft or Banker's Cheque / National Savings Certificate (NSC) / Other scripts under Small Savings by Post Office – Duly transferred in the name of Procuring Entity and approved by Post Master.
 - Bank Guarantee of a Scheduled Bank (with conditions as stated for Bid Security)
 - Fix Deposit Receipts of a Scheduled Bank - Duly discharged in favour of Procuring Entity.
- Validity –
 - 60 days beyond date of completion of all contractual obligations of Bidder including warranty obligations and maintenance and defect liability period.



Bidding Process

Execution of Agreement (R-76)

- Bidder to execute on non-judicial stamp of specified value at its cost.
- Execute within period specified in Bidding Document.
- If time not specified in Bidding Document – 15 days from the date of letter of acceptance, dispatched to the Bidder.
- If Bidder fails, to execute the agreement :
 - Take action as per the Act and the Rules.
 - May cancel the Bid.
 - May offer to next lowest Bidder, as per procedure in Bidding Documents.



Bidding Process

Confidentiality (A-49,R-77)

- Section 49(1) provide that the Procuring Entity shall not disclose information if –
 - Impede enforcement of any law.
 - Affect security or strategic interest of India.
 - Affect intellectual property rights, legitimate commercial interest of Bidder or the Procuring Entity.
- Procuring Entity shall avoid disclosure to competitive Bidders or any other person, not authorised to have access to communication with Bidders.
- Procuring Entity may impose on Bidders for fulfilling the conditions regarding disclosure of which violates section 49(1).

Cancellation of Procurement Process (R-78)

Once cancelled –

Not to be reopened. But new procurement process may be initiated.



Bidding Process

Documentary record of procurement proceedings (R-79)

- Documents pertaining to determination of need.
- Description of the subject matter.
- Reasons for choice of procurement method.
- Particulars of participating bidders.
- Request for clarifications and Responses thereto.
- Bid prices and other financial terms.
- Summary of the evaluation of Bids.
- Detail of appeal u/s. 38 and related decisions.
- A summary of evaluation and comparison of Bids.
- If procurement process is cancelled – reasons of cancellation.
- Any document, notification, decision or any other information generated in course of procurement shall be in the form which may be accessible to be usable for subsequent reference.



Bidding Process

Record to be maintained – A 10(1) ,10 (3), and R(79)

- **Determination of need.**
- **Description of the subject matter.**
- **Reason for choice of a Procurement Method.**
- **Particulars of Bidders.**
- **Clarifications and response thereto.**
- **Bid Prices and other financial terms.**
- **Summary and evaluation of Bids.**
- **Detail of appeal u/s 38 and decisions.**
- **Copy of the contract / rate contract.**
- **Empanelment – copy of agreement.**
- **Summary of evaluation.**
- **Comparison of Bids.**
- **Reason for rejection or non-consideration of a Bid. / If procurement process cancelled, reasons thereof.**
- **Any other, if prescribed.**
- **RTI Act, 2005; / Any other Law in force relating to retention of record;**
- **The record shall be maintained for a reasonable period so as to enable audit of such other review.**



Code of Integrity

Procuring Entity, Bidders, Officers or Employees of PE (Sec.11, R-80)

- ▶ **Maintain an unimpeachable standard of integrity both inside and outside their office.**
- ▶ **Act in accordance with the provisions of the Act, these rules, guidelines issued under the Act and instructions**
- ▶ **Not allow any bidders to have access to information on a particular procurement, before such information is available to the public at large.**
- ▶ **Not intentionally use unnecessarily restrictive or “tailored” specifications, terms of reference or statements of work that can discourage competition. Not solicit or accept any bribe, reward or gift or any material benefit of any directly or indirectly promise of future employment from anyone, who has sought or is seeking procurement from the procuring entity.**
- ▶ **Not have a financial interest in any bidder(s) responding to a procuring entity’s bidding process.**
- ▶ **Not disclose proprietary and source selection information.**
- ▶ **Treat all bidders in a fair and equitable manner.**
- ▶ **Provide all bidders identical information at the same time.**
- ▶ **Apply the same criteria of evaluation as specified in the bidding documents. Not entertain any favour, recreation, presents, services, etc. from the bidders or prospective bidders.**
- ▶ **Protect the interests of the procuring entity.**
- ▶ **Maintain confidentiality of all bids while dealing with information and information sources.**
- ▶ **Ensure that the selection of bidder is as per the bidding documents and is not influenced by personal reasons attributable to concerned officials.**
- ▶ **Disclose conflict of interest.**



Code of Integrity

For Bidders-

- ▶ Not offer any bribe, reward or gift or any material benefit either directly or indirectly in exchange for an unfair advantage in procurement process or to otherwise influence the procurement process.
- ▶ Not misrepresent or omit information that misleads or attempts to mislead so as to obtain a financial or other benefit or avoid an obligation.
- ▶ Not indulge in any collusion, bid rigging or anti-competitive behaviour to impair the transparency, fairness and progress of the procurement process. Not misuse any information shared between the procuring entity and the bidders with an intent to gain unfair advantage in the procurement process.
- ▶ Not indulge in any coercion including impairing or harming or threatening to do the same, directly or indirectly, to any party or to its property to influence the procurement process.
- ▶ Not obstruct any investigation or audit of a procurement process.
- ▶ Disclose conflict of interest.
- ▶ Disclose any previous transgressions with any entity in India or any other country during the last three years or any debarment by any other procuring entity.



Code of Integrity

Breach of code of integrity by the bidder

- ▶ Without prejudice to the provisions of Chapter IV, following action may be taken by PE in case of breach of Code of Integrity-
- ▶ (a) exclusion of the bidder from the procurement process;
- ▶ (b) calling off of pre-contract negotiations and forfeiture or encashment of bid security;
- ▶ (c) forfeiture or encashment of any other security or bond relating to the procurement;
- ▶ (d) recovery of payments made by the procuring entity along with interest thereon at bank rate;
- ▶ (e) cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;
- ▶ (f) debarment of the bidder from participation in future procurements of the procuring entity for a period not exceeding three years under section 46.



Code of Integrity

For Procuring Entity or its Personnel

- ▶ When PE's personnel's private interests, such as outside professional or other relationships or personal financial assets, interfere or appear to interfere with the proper performance of its professional functions or obligations as a procurement official.
- ▶ such private interests as personal investments and assets, political or other outside activities and affiliations while in the service of the procuring entity, employment after retirement from the procuring entity's service or the receipt of a gift that may place the procuring entity's personnel in a position of obligation.
- ▶ Use of PE's assets, including human, financial and material assets, or the use of procuring entity's office or knowledge gained from official functions for private gain or to prejudice the position of someone procuring entity's personnel does not favour.
- ▶ PE's personnel is seen to benefit, directly or indirectly, or allow a third party, including family, friends or someone they favour, to benefit from procuring entity's personnel's actions or decisions.



Code of Integrity: Conflict of Interest

For Bidders

- They have controlling partners in common.
- They receive or have received any direct or indirect subsidy from any of them.
- They have the same legal representative for purposes of the bid
- They have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another
- A bidder participates in more than one bid in the same bidding process.
- A bidder or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the subject matter of procurement of the bidding process.



Appeals *(S-38 to 40, R-83 to 85)*

Filing an appeal

If any Bidder or prospective bidder is aggrieved that any decision, action or omission of the Procuring Entity is in contravention to the provisions of the Act or the Rules or the Guidelines issued thereunder, he may file an appeal to First Appellate Authority, as specified in the Bidding Document within a period of ten days from the date of such decision or action, omission, as the case may be, clearly giving the specific ground or grounds on which he feels aggrieved:

Provided that after the declaration of a Bidder as successful the appeal may be filed only by a Bidder who has participated in procurement proceedings:

- ▶ Provided further that in case a Procuring Entity evaluates the Technical Bids before the opening of the Financial Bids, an appeal related to the matter of Financial Bids may be filed only by a Bidder whose Technical Bid is found to be acceptable. The officer to whom an appeal is filed under para (1) shall deal with the appeal as expeditiously as possible and shall endeavour to dispose it of within thirty days from the date of the appeal.**
- ▶ If the officer designated under para (1) fails to dispose of the appeal filed within the period specified in para (2), or if the Bidder or prospective bidder or the Procuring Entity is aggrieved by the order passed by the First Appellate Authority, the Bidder or prospective bidder or the Procuring Entity, as the case may be, may file a second appeal to Second Appellate Authority specified in the Bidding Document in this behalf within fifteen days from the expiry of the period specified in para (2) or of the date of receipt of the order passed by the First Appellate Authority, as the case may be.**



Appeals *(S-38 to 40, R-83 to 85)*

Appeal not to lie in certain cases

No appeal under section 38 shall lie against any decision of the procuring entity relating to the following matters, namely:-

- ▶ (a) determination of need of procurement in terms of section 5;
- ▶ (b) provisions limiting participation of bidders in the bid process in terms of the provisions of section 6;
- ▶ (c) the decision of whether or not to enter into negotiations in terms of section 15;
- ▶ (d) cancellation of a procurement process in terms of section 26;
- ▶ (e) applicability of the provisions of confidentiality under section 49.



Appeals (*S-38 to 40, R-83 to 85*)

Stay of procurement proceedings

- While hearing of an appeal under section 38, the officer or authority hearing the appeal may, on an application made in this behalf and after affording a reasonable opportunity of hearing to the parties concerned, stay the procurement proceedings pending disposal of the appeal, if he, or it, is satisfied that failure to do so is likely to lead to miscarriage of justice.



Appeals (S-38 to 40, R-83 to 85)

Form of Appeal

- ▶ An appeal shall be in the prescribed Form along with as many copies as there are respondents in the appeal.
- ▶ Every appeal shall be accompanied by an order appealed against, if any, affidavit verifying the facts stated in the appeal and proof of payment of fee.
- ▶ Every appeal may be presented to First Appellate Authority or Second Appellate Authority, as the case may be, in person or through registered post or authorised representative.

Fee for filing appeal-

- ▶ (a) Fee for first appeal shall be rupees two thousand five hundred and for second appeal shall be rupees ten thousand, which shall be non-refundable.
- ▶ (b) The fee shall be paid in the form of bank demand draft or banker's cheque of a Scheduled Bank in India payable in the name of Appellate Authority concerned.

Procedure for disposal of appeal

- ▶ (a) The First Appellate Authority or Second Appellate Authority, as the case may be, upon filing of appeal, shall issue notice accompanied by copy of appeal, affidavit and documents, if any, to the respondents and fix date of hearing. (b) On the date fixed for hearing, the First Appellate Authority or Second Appellate Authority, as the case may be, shall,-
 - ▶ (i) hear all the parties to appeal present before him; and
 - ▶ (ii) peruse or inspect documents, relevant records or copies thereof relating to the matter.
- ▶ (c) After hearing the parties, perusal or inspection of documents and relevant records or copies thereof relating to the matter, the Appellate Authority concerned shall pass an order in writing and provide the copy of order to the parties to appeal free of cost.
- ▶ (d) The order passed under sub-clause (c) above shall also be placed on the State Public Procurement Portal.



Offences and Penalties (Sections 41 to 47)

Punishment for taking gratification or valuable thing in respect of public procurement

Whoever, being an officer or employee of the procuring entity acting in connection with any procurement process, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification other than legal remuneration or any valuable thing without consideration or for a consideration which he knows to be inadequate, in connection with such public procurement, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Vexatious appeals or complaints

Whoever intentionally files any vexatious, frivolous or malicious appeal or complaint under this Act, with the intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder, shall be punished with fine which may extend to twenty lakh rupees or five per cent of the value of procurement, whichever is less.



Offences and Penalties (Sections 41 to 47)

Interference with procurement process

(1) Whoever-

- ▶ (a) interferes with or influences any procurement process with the intention of securing any wrongful gain or undue advantage for any prospective bidder or bidder; or
- ▶ (b) interferes with the procurement process with the intention of causing any unfair disadvantage for any prospective bidder or bidder; or
- ▶ (c) engages in any action or lobbying, directly or indirectly, with the objective of unduly restricting fair competition;
- ▶ (d) intentionally influences any procuring entity or any officer or employee thereof or willfully or fraudulently makes any assertion or representation that would restrict or constrain fair competition in any procurement process;
- ▶ (e) engages a former officer or employee of a procuring entity as an employee, director, consultant, adviser or otherwise, within a period of one year after such former officer or employee was associated with a procurement in which the employer had an interest;
- ▶ (f) engages in any form of bid-rigging, collusive bidding or anticompetitive behavior in the procurement process; or
- ▶ (g) intentionally breaches confidentiality referred to in section 49 for any undue gain-



Offences and Penalties (Sections 41 to 47)

A bidder who-

- ▶ (a) withdraws from the procurement process after opening of financial bids;
- ▶ (b) withdraws from the procurement process after being declared the successful bidder;
- ▶ (c) fails to enter into procurement contract after being declared the successful bidder;
- ▶ (d) fails to provide performance security or any other document or security required in terms of the bidding documents after being declared the successful bidder, without valid grounds,

shall, in addition to the recourse available in the bidding documents or the contract, be punished by fine which may extend to fifty lakh rupees or ten per cent of the assessed value of procurement, whichever is the less.

Whoever intentionally files any vexatious, frivolous or malicious appeal or complaint under this Act, with the intention of delaying or defeating any procurement or causing loss to any procuring entity or any other bidder, **shall be punished with fine which may extend to twenty lakh rupees or five per cent of the value of procurement, whichever is less.**



Offences and Penalties (Sections 41 to 47)

Debarment from bidding

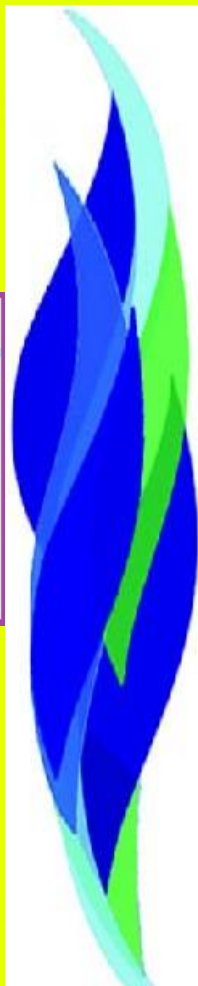
- (1) A bidder shall be debarred by the State Government if he has been convicted of an offence -
- ▶ (a) under the Prevention of Corruption Act, 1988 (Central Act No.49 of 1988); or
 - ▶ (b) under the Indian Penal Code, 1860 (Central Act No. 45 of 1860) or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
- ▶ (2) A bidder debarred under sub-section
- ▶ **(1) shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date on which he was debarred.**
- ▶ **(3) If a procuring entity finds that a bidder has breached the code of integrity prescribed in terms of section 11, it may debar the bidder for a period not exceeding three years;**
- ▶ **(4) Where the entire bid security or the entire performance security or any substitute thereof, as the case may be, of a bidder has been forfeited by a procuring entity in respect of any procurement process or procurement contract, the bidder may be debarred from participating in any procurement process undertaken by the procuring entity for a period not exceeding three years.**

Abetment of certain offences

- Whoever abets an offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, **shall be punished with the punishment provided for the offence.**



Government of Rajasthan
FINANCE DEPARTMENT



THANK YOU